

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PAUL WHITEHAIR</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 241,272
<b>UNITED PARCEL SERVICE</b>	)	
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the February 20, 2001, Award of Administrative Law Judge Bruce E. Moore. In the Award, claimant was granted temporary total disability benefits and medical treatment for an injury to his left knee, but denied any permanent impairment, as a result of the November 20, 1997, accident with respondent United Parcel Service. The Board held oral argument on August 22, 2001.

**APPEARANCES**

Claimant appeared by his attorney, Roger D. Fincher of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Anton C. Andersen of Kansas City, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award of the Administrative Law Judge.

**ISSUES**

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment with respondent on the date alleged?
- (2) Should the medical records of W. R. Baxter, M.D., be included for the Board's consideration?
- (3) What is the nature and extent of claimant's injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail, and it is not necessary that those be repeated herein. The Appeals Board adopts those findings and conclusions as its own.

The Appeals Board finds the testimony of orthopedic surgeons Milo G. Sloo, M.D., and John A. Tanksley, M.D., to be persuasive that, while claimant suffered an injury with respondent, the repair of the fat pad in claimant's left knee resulted in no permanent impairment. Those opinions expressed pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, were more persuasive than that provided by claimant's doctor, Peter Bieri, M.D.

Additionally, the Appeals Board finds there is some question regarding the credibility of claimant's symptoms. The problems associated with the earlier injury of October 29, 1997, while claimant was exiting a car, together with the fact that claimant initially denied, on more than one occasion, the occurrence of the October 29 incident, raises additional questions in the Board's mind regarding the believability of claimant's complaints as submitted to Dr. Bieri. The Appeals Board, therefore, finds based upon the complete record that claimant has failed to prove that he suffered any permanent impairment as a result of the injury suffered on November 20, 1997, with respondent.

The medical records of W. R. Baxter, M.D., were not considered by the Board as their consideration is specifically precluded by K.S.A. 44-519 (Furse 1993).

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore, dated February 20, 2001, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Roger D. Fincher, Attorney for Claimant  
       Anton C. Andersen, Attorney for Respondent  
       Bruce E. Moore, Administrative Law Judge  
       Philip S. Harness, Director